

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MASAO FUKUDA and KEIICHI NISHIMURA

Appeal No. 1998-2206
Application No. 08/537,143

ON BRIEF

Before COHEN, BARRETT, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 7 and 16 through 22. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a former for forming an elongated planar bag-making material into a tubular form and to a packaging machine. A basic understanding of the invention can be derived from a reading of exemplary claims 1

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and 16, a copy of which appears in the APPENDIX to the brief
(Paper No. 11).

As evidence of anticipation and obviousness, the examiner
has applied the documents listed below:

Monsees et al. 14, 1960 (Monsees '408)	2,940,408	Jun.
Monsees et al. 25, 1964 (Monsees '072)	3,122,072	Feb.
Fukuda 1994	5,279,098	Jan. 18,

The following rejections are before us for review.

Claims 1 through 7 stand rejected under 35 U.S.C. §
102(b) as being anticipated by Monsees '072 (with Monsees '408
incorporated by reference therein).

Claims 16 through 22 stand rejected under 35 U.S.C. §
103(a) as being unpatentable over Fukuda in view of Monsees
'072 (with Monsees '408 incorporated by reference therein).

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The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 12), while the complete statement of appellants' argument can be found in the brief (Paper No. 11).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied teachings,¹ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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We cannot sustain the examiner's respective rejections of appellants' claims.

Independent claim 1 is drawn to a former for forming an elongated planar bag-making material into a tubular form, with the former comprising, inter alia, a hollow cylindrical tubular part defining an axial direction, and a shoulder part having a planar guide section which is connected to the tubular part along a connecting line which surrounds the tubular part, the angle between a tangent to the connecting line tangentially contacting the connecting line at a contact point and a plane perpendicular to the axial direction changing at a constant rate.

Independent claim 16 sets forth a packaging machine comprising, inter alia, a web supporting means, a former, web guiding means, a longitudinal sealer, a transverse sealer, with the former including a hollow cylindrical tubular part defining an axial direction, and a shoulder part having a planar guide section which is connected to the tubular part along a connecting line which surrounds the tubular part, the

angle between a tangent to the connecting line tangentially contacting the connecting line at a contact point and a plane perpendicular to the axial direction changing at a constant rate.

Dependent claims 4, 5, 19, and 20 respectively set forth that the connecting line can become a parabola or a hyperbolic curve if the tubular part is cut and flattened.

As evidence of anticipation, the examiner relies upon the Monsees '072 patent, which incorporates by reference the Monsees '408 patent. Considering the referenced documents as a whole, we are not convinced by the examiner's findings that the two Monsees' teachings evidence a connecting line wherein the angle between a tangent to the connecting line tangentially contacting the connecting line at a contact point and a plane perpendicular to an axial direction changes at a constant rate. The examiner has not shown that the equation governing the curvature of the groove 22 of Monsees '408 (column 4, lines 5 through 24) establishes, in fact, a connecting line as defined in independent claim 1, which so

defined connecting line surrounds the tubular part. Merely stating that the claimed curves are "inherently disclosed" (answer, page 4) is not persuasive. Since the evidence has not been proven to address all limitations of claim 1, the rejection under 35 U.S.C. § 102(b) cannot be sustained.

Turning now to independent claim 16, we conclude that we cannot sustain the obviousness rejection of this claim. Consistent with our analysis above, it is clear to us that the examiner has not shown that the equation governing the curvature of the groove 22 of Monsees '408 (column 4, lines 5 through 24) establishes, in fact (or would have been suggestive of), a connecting line as defined in independent claim 16, which so defined connecting line surrounds the tubular part. Merely asserting that Monsees discloses the former (answer, page 5) is not convincing. While the Fukuda document teaches a packaging machine, it does not overcome the noted deficiency of the two Monsees patents. Accordingly, since the evidence before us would not have been suggestive of the claimed invention, the rejection of claim 16 under 35 U.S.C. § 103(a) cannot be sustained.

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In summary, this panel of the board has not sustained each of the examiner's rejections on appeal.

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

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APPEAL NO. 1998-2206 - JUDGE

APPLICATION NO. 08/537,143

APJ COHEN

APJ BARRETT

APJ BAHR

DECISION: REVERSED

Prepared By:

DRAFT TYPED: 19 Sep 02

FINAL TYPED: